FILE COPY

Office-Supreme Court, U.S.
FILED
APR 21 1960
JAMES R. BROWNING, Clerk

No. 815

In the Supreme Court of the United States

OCTOBER TERM, 1959

JOSEPH MORRIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,

GEORGE COCHRAN DOUB,
Assistant Attorney General,

ALAN S. ROSENTHAL,
SEYMOUR FARBER,
Attorneys,
Department of Justice,
Washington 25, D.C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Constitutional provision, treaty provision, and statutes involved	2
Statement	3
Argument	5
Conclusion	12

CITATIONS

Cases:	
Alling v. *United States*, 114 U.S. 562	8, 9
Armstrong v. *United States*, No. 270, this Term	11
Eastern Extension Tel. Co. v. *United States*, 231 U.S. 326	6
Faber, Coe & Gregg v. *United States*, 71 C. Cls. 296	8
Great Western Insurance Co. v. *United States*, 112 U.S. 193	8, 9
Holzendorf v. *Hay*, 20 App. D.C. 576, writ of error dismissed, 194 U.S. 373	11
Kendall v. *United States*, 107 U.S. 123	10
Soriano v. *United States*, 352 U.S. 270	10, 11
United States v. *Weld*, 127 U.S. 51	8
Z. & F. Assets Corp. v. *Hull*, 311 U.S. 470	11
Constitution, statutes and treaties:	
Constitution of United States, Amendment 5	2, 11
International Claims Settlement Act of 1949, 64 Stat. 12	9
R.S. § 1066	7
18 Stat. 245	8
28 U.S.C. 1502	2, 3, 5, 6, 7, 9, 12
28 U.S.C. 2501	2, 3, 5, 10, 11, 12
War Claims Act of 1948, 62 Stat. 1240	9

Constitution, statutes and treaties—Continued Page

Treaty of Peace with Japan, 3 U.S. (Part 3) 3169, *et seq.* 10
Article 14(b), p. 3183 2, 4, 6
Article 15(a), pp. 3183-3184 8
Treaty of Washington, 17 Stat. 863 8

Miscellaneous:

106 Cong. Rec., daily ed., 3666 9
H.R. 2485, 86th Cong., 1st Sess. 3
VI Moore, *International Law Digest*, p. 695 11

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 815

JOSEPH MORRIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

No opinion was filed by the Court of Claims.

JURISDICTION

The judgment of the Court of Claims was entered on November 27, 1959 (R. 31). By order of the Chief Justice, dated February 20, 1960, the time to file a petition for a writ of certiorari was extended to and including March 24, 1960. The petition for a writ of certiorari was filed on March 24, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTIONS PRESENTED

1. Whether petitioner's claim against the United States grows out of or is dependent upon any treaty entered into with a foreign nation, and, therefore, is expressly excepted from the jurisdiction of the Court of Claims by 28 U.S.C. 1502.

2. Whether petitioner's claim was filed in the Court of Claims within the six-year period prescribed by 28 U.S.C. 2501.

CONSTITUTIONAL PROVISION, TREATY PROVISION, AND STATUTES INVOLVED

1. Constitution of the United States, Amendment 5, provides in relevant part:

> * * * nor shall private property be taken for public use, without just compensation.

2. Article 14(b) of the Treaty of Peace with Japan, 3 U.S.T. (Part 3) 3183, provides:

> Except as otherwise provided in the present Treaty, the Allied Powers waive all reparations claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war, and claims of the Allied Powers for direct military costs of occupation.

3. 28 U.S.C. 1502 provides:

> Except as otherwise provided by Act of Congress, the Court of Claims shall not have jurisdiction of any claim against the United States growing out of or dependent upon any treaty entered into with foreign nations.

4. 28 U.S.C. 2501 provides in relevant part:

> Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.
>
> * * * *
>
> A petition on the claim of a person under legal disability or beyond the seas at the time the claim accrues may be filed within three years after the disability ceases.
>
> * * * *

STATEMENT

By suit filed in the Court of Claims on February 24, 1959, petitioner sought to obtain just compensation in the amount of $125,000 for the alleged "condemnation" by the United States of his "right * * * to pursue compensation from the Japanese Government" (R. 1-3). The Court of Claims dismissed the petition on the ground that, pursuant to 28 U.S.C. 1502, *supra*, p. 2, it lacked jurisdiction over the claim (R. 31).

In his petition in the Court of Claims, petitioner stated that he is a citizen of the United States and that, prior to World War II, he resided in Tientsin, China, where he was engaged in the transportation and trucking business (R. 1-2). On December 8, 1941, petitioner alleged, the Japanese Government, through its military garrison stationed in Tientsin, seized petitioner's property consisting of automobiles, trucks, and stocks of gasoline, having a total market value of $125,000 (R. 2).

Petitioner averred that the Japanese military garrison at Tientsin issued certain "seizure receipts" which "stated clearly that Japan would return [petitioner's] property to him after the cessation of hostilities" (R. 2). Subsequently, petitioner and his family were placed in a Japanese concentration camp where they were detained until the cessation of hostilities in 1945 (R. 2). It was further alleged that Japan has never returned any of petitioner's property and that he has not received any compensation from Japan for its loss (R. 2).

Paragraph 4 of the petition stated that petitioner received a letter from an official of the Ministry of Foreign Affairs of Japan advising petitioner that "[s]ince the seizure of your property was done by the Japanese Armed Forces in Tientsin, China, during the Pacific War, your case falls within the claims for the loss of property arising out of the 'Actions taken by Japan and its nationals in the course of the prosecution of the War' as mentioned in Article 14(b) of the Peace Treaty with Japan, and such claims of the Allied powers and their nationals have been waived according to that article" (R. 2-3).

Paragraph 5 of the petition alleged that (R. 3):

> By Article 14(b) of the Treaty with Japan the [petitioner] lost all rights to recover his property or to be justly compensated therefor by Japan. By its ratification of the Treaty, the United States entered into a binding international agreement with Japan in which the United States gave up the right of the [petitioner] to make a valid claim against the Japanese govern-

> ment, and surrendered the rights of the United States under international law to press claims on behalf of the [petitioner] and other citizens, its nationals, against Japan, a foreign government, for compensation for property nationalized and seized by the Japanese government.

In his prayer for relief, petitioner requested the Court of Claims to issue a declaratory judgment that "the [United States] deprived [petitioner] of his right for compensation from the Japanese government, by condemning such right in [the] treaty with Japan, and that such condemnation was without the consent and without compensation of [petitioner]" and that he was therefore entitled to "the sum of $125,000.00, plus interest to date * * *" (R. 3).

The Government's motion for summary judgment for lack of jurisdiction was granted by the Court of Claims on November 27, 1959 (R. 31).[1]

ARGUMENT

1. 28 U.S.C. 1502, *supra*, p. 2, expressly excepts from the jurisdiction of the Court of Claims "any claim against the United States growing out of or dependent upon any treaty entered into with foreign

---

[1] The Government's motion (R. 1-13) raised three jurisdictional bars to petitioner's claim: (1) 28 U.S.C. 1502, *supra*, p. 2, which excludes from the jurisdiction of the Court of Claims "any claim against the United States growing out of or dependent upon any treaty entered into with foreign nations"; (2) the limitations provision of 28 U.S.C. 2501, *supra*, p. 3; and (3) the absence of any jurisdiction in the Court of Claims to issue the declaratory judgment prayed for in the petition. The Court of Claims rested its dismissal on the first of these grounds (R. 31).

nations." We submit that petitioner's suit for just compensation both grows out of and is dependent upon Article 14(b) of the Allied Peace Treaty with Japan, and that it was therefore properly dismissed by the Court of Claims.

Until Article 14(b) became effective, petitioner had no possible claim against the United States. It is that provision, and that provision alone, upon which petitioner rests his entire case. For petitioner's theory is that the treaty eliminated his "right for compensation from the Japanese government" (R. 3) and that such elimination of that right constituted a "taking" by the United States. Plainly, therefore, petitioner's suit for just compensation is both "growing out of" and "dependent upon" the Japanese treaty.

Petitioner contends (Pet. 4-5, 9), however, that 28 U.S.C. 1502 only applies where the litigant is seeking to enforce rights conferred by a treaty, and not where the claim is based on the alleged destruction of rights by treaty. He insists (Pet. 22) that his claim "is for the taking involved in the process of the making of the treaty. It grows out of the acts done by the Government in order to have this treaty, in order to arrive at it."

But it was the treaty itself, and not its negotiation, that cut off petitioner's rights to press his claim against the Japanese government. See *supra*. Petitioner's argument is also refuted by this Court's decision in *Eastern Extension Tel. Co.* v. *United States*, 231 U.S. 326. In that case a British corporation had been granted a concession and certain subsidies from Spain for the construction and operation

of various cables between the Philippines and other points. The United States, pursuant to its treaty with Spain, assumed jurisdiction and control over the cables. The British corporation sued the United States in the Court of Claims to recover subsidies allegedly due it from the United States, as the successor in interest from Spain. Attempting to avoid the forerunner provision of 28 U.S.C. 1502 (R.S. § 1066), it was argued that the claim should not be regarded as one dependent upon a treaty obligation, but as one based upon a pre-existing contract that was binding on the United States under principles of international law. The Court rejected this contention. It stated (231 U.S. at 333):

> Whether the liability asserted is said to result from an express provision of assumption contained in a treaty, or is *sought to be enforced as a necessary consequence of the cession made by a treaty, it is equally within the policy and spirit of the statute; and the letter of the statute should not be otherwise construed. It is its evident purpose that the obligations of the United States directly resulting from a treaty should not be determined by the Court of Claims.* [Emphasis added.]

Similarly, in the instant case the "liability * * * sought to be enforced [is] a necessary consequence of the cession made by [the] treaty," namely, the waiver in the treaty of claims by Allied nationals for property losses arising out of actions by Japan and its nationals in the prosecution of the war.

Even in circumstances where, pursuant to a treaty with the United States, a foreign government has

made payments to the United States on account of injuries inflicted to American citizens, this Court has held that the Court of Claims was without jurisdiction to entertain actions against the United States in which recovery from those payments was sought by injured citizens. *Great Western Insurance Company* v. *United States*, 112 U.S. 193; *Alling* v. *United States*, 114 U.S. 562.[2] This case is *a fortiori*, inasmuch as no payment or award of any kind has been made by the Japanese Government to the United States on account of damages to, or destruction of, American-owned property located—as was petitioner's—outside the Japanese islands.[3]

---

[2] *United States* v. *Weld*, 127 U.S. 51, is of no help to petitioner. That case grew out of an award paid to the United States by Great Britain in settlement of the historical Alabama Claims in accord with the Treaty of Washington (17 Stat. 863). Congress had created a Court of Commissioners of Alabama Claims to hear and determine the claims of citizens to any portion of the award (18 Stat. 245). The plaintiffs sued in the Court of Claims to recover an unsatisfied part of a judgment recovered by them in the Court of Commissioners of Alabama Claims which, they alleged, had been improperly and illegally withheld from them by the Secretary of Treasury. The Court rejected the Government's contention that the case grew out of or was dependent upon the Treaty of Washington and therefore beyond the jurisdiction of the Court of Claims. The Court noted that the plaintiffs' claims rested on the Act of Congress creating the Court of Commissioners of Alabama Claims and not on any provision of the Treaty. See, also, *Faber, Coe & Gregg* v. *United States*, 71 C.Cls. 296, 302.

[3] Under Article 15(a) of the Treaty, 3 U.S.T. (Part 3) 3183-3184, Japan agreed, however, to make compensation to owners of property located within Japan.

It should be noted, moreover, that rather than burdening the courts with the cumbersome and difficult task of processing claims by American citizens based on acts of foreign governments—and, of course, petitioner's claim for just compensation in the Court of Claims would depend, among other things, upon the validity of his claim against Japan—the Congress has ordinarily created special claims commissions to hear and determine such claims. E.g., War Claims Act of 1948, 62 Stat. 1240; International Claims Settlement Act of 1949, 64 Stat. 12; see also, *Great Western Insurance Co.* v. *United States*, 112 U.S. 193; *Alling* v. *United States*, 114 U.S. 562. Indeed, there is presently before the Congress a proposed amendment to the War Claims Act of 1948 which would establish a Japanese Claims Account to cover claims of American nationals—such as this petitioner—for damages, or loss or destruction of property, in territory occupied or attacked by the Japanese military forces during World War II. H.R. 2485, 86th Cong. 1st Sess. The bill was passed by the House of Representatives on March 1, 1960 (106 Cong. Rec., daily ed., 3666), and is now before the Senate Judiciary Committee.

Clearly, the Court of Claims properly determined that it had no jurisdiction to entertain petitioner's claim.[4]

---

[4] Petitioner suggests (Pet. 23-25) that acceptance of the Court of Claims' interpretation of 28 U.S.C. 1502 would raise doubts as to the constitutionality of the provision. The suggestion is without merit. In creating the Court of Claims,

2. There is still another jurisdictional bar to petitioner's suit which was also urged by the Government in the court below. 28 U.S.C. 2501, *supra*, p. 3, provides that "Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues." In the present case, suit was filed on February 24, 1959 (R. 1), which was more than six years after April 28, 1952, the effective date of the Treaty of Peace with Japan.[5] Indeed, petitioner expressly conceded in the court below that his petition was filed in the Court of Claims "more than six years after the claim arose" (R. 21).

Petitioner has argued (R. 21), however, that inasmuch as he has resided continuously in Japan since his claim accrued, he falls within the savings clause of 28 U.S.C. 2501, *supra*, p. 3, which provides that:

> A petition on the claim of a person under legal disability or *beyond the seas at the time the claim accrues* may be filed within three years after the disability ceases. [Emphasis added.]

Petitioner's construction of the "beyond the seas" provision of the savings clause is untenable. If petitioner were right, one who has a claim against the United States which is cognizable in the Court of Claims could toll the statute of limitations indefinitely

---

the Congress was, of course, free to confer such jurisdiction upon that court as it deemed appropriate. *Soriano* v. *United States*, 352 U.S. 270; *Kendall* v. *United States*, 107 U.S. 123.

[5] See 3 U.S.T. (Part 3) 3169.

merely by remaining outside the country. We do not think, however, that Congress intended to give non-residents or foreign corporations the right to bring suit in the Court of Claims at their convenience. In our view, the "beyond the seas" provision was intended only to afford an additional three-year period for bringing suit to those persons whose claims accrued at a time when they were over-seas and who were unable while abroad to have access to the Court of Claims or to American counsel. Petitioner, although residing in Japan, has been fully able to communicate with the Court of Claims or American counsel ever since the accrual of his claim in April 1952. In these circumstances, petitioner's claim is barred by the six-year limitation of 28 U.S.C. 2501. Cf. *Soriano* v. *United States*, 352 U.S. 270, 277.[6]

---

[6] If certiorari should be granted, the Government also reserves the right to argue that petitioner's claim does not present a justiciable controversy, (see *e.g. Z. & F. Assets Corp.* v. *Hull*, 311 U.S. 470, 490 (concurring opinion); *Holzendorf* v. *Hay*, 20 App. D.C. 576, 580, writ of error dismissed, 194 U.S. 373; VI Moore, *International Law Digest*, p. 695), or give rise to a compensable taking within the meaning of the Fifth Amendment. See Brief for the United States in *Armstrong* v. *United States*, No. 270, this Term, pp. 20-24.

CONCLUSION

The Court of Claims correctly dismissed petitioner's claim for want of jurisdiction under 28 U.S.C. 1502. Moreover, petitioner's claim was untimely under 28 U.S.C. 2501. The petition for a writ of certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

GEORGE COCHRAN DOUB,
Assistant Attorney General.

ALAN S. ROSENTHAL,
SEYMOUR FARBER,
Attorneys.

APRIL 1960

☆ U. S. GOVERNMENT PRINTING OFFICE: 1960 547328 1351